

**KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 8, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on March 8, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon-Griffin, Member

Prior to beginning the meeting, Chairman Sapp wanted to express sorrow at the loss of the Hon. Don Duff, a Frankfort attorney who has practiced before the Personnel Board for many years. Mr. Duff was professional, always conducted himself with honor, and was sincere in his efforts to represent his clients.

Mr. Sipek added that Mr. Duff had a tremendous impact on the Board and has represented clients since the beginning of the Personnel Board. He has also been an impact on administrative law in Kentucky as a whole.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEBRUARY 15, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Hutcheson seconded, and the motion carried 4-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that Chairman Sapp and Mr. Blevins were both confirmed by the Senate and will continue on the Board.

Mr. Sipek stated that a letter requesting additional funds for the Board was drafted and signed by Chairman Sapp. The letter is still in draft form and our Budget Analyst is going over the figures. Mr. Sipek stated he hoped the Board will receive additional funds before the end of the fiscal year and will keep everyone advised of the situation.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

Chairman Sapp stated that Ms. Bevington advised by e-mail that she did not have a report for the Board's March meeting. However, she anticipates having a substantial report for the April meeting, to include regulation amendments.

Chairman Sapp called the parties forward for oral argument.

5. **ORAL ARGUMENTS**

A. Shena Back v. Justice and Public Safety Cabinet (Corrections)

Mr. Sipek stated that the Hon. Wesley Duke, counsel for Appellee, was present. The Appellant's attorney was the Hon. Don Duff. At the last Board meeting a motion was made and approved by the Board to have the Hon. Paul Fauri to step-in for Mr. Duff at oral argument. With the passing of Mr. Duff, Mr. Sipek requested that the matter be passed to next month to find out how the Appellant wants to proceed with her appeal.

B. Oda Barnes v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Michael Board. After presenting oral arguments, the parties answered questions from the Board.

C. William Mark Cassity v. Public Protection Cabinet (ABC)

Present for oral argument were the Appellant, William Mark Cassity; counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Latasha Buckner. Also present was Agency representative Mr. Mike Razor. After presenting oral arguments, the parties answered questions from the Board.

D. Charles Clay Clement v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

E. Reda Darlene Heflin v. Justice and Public Safety Cabinet (Juvenile Justice)

Present for oral argument were the Appellant, Reda Darlene Heflin; and counsel for Appellee, the Hon. Adam Adkins. After presenting oral arguments, the parties answered questions from the Board.

6. **INVESTIGATIONS**

Update on Department of Agriculture Investigation

Mr. Sipek stated that he has made six additional document requests and has conducted eight interviews of witnesses. He is working with both the Department of Agriculture and the Personnel Cabinet to get this done. He has completed document requests for all the Auditor's findings, but still has a lot to accomplish.

**B. Michael O'Brien Request – Justice and Public Safety Cabinet
(Juvenile Justice)
--Appellee's Response**

Present was the Hon. Adam Adkins, counsel for the Justice and Public Safety Cabinet.

Mr. Sipek stated that Mr. O'Brien called and advised he has received all the information from the Department of Juvenile Justice, but needs time to review it. Therefore, Mr. Sipek wants the Board to pass this matter to April. Mr. Adkins stated that he has not heard from Mr. O'Brien. Mr. Adkins contacted the Treasury Department and was advised that Mr. O'Brien has not cashed any of the checks. Kentucky Retirement calculated the amounts and Ms. Rhonda Shear is present to go over the figures. As to the COBRA payments made by Mr. O'Brien, Mr. Adkins stated the Agency will need proof of payment. Mr. Sipek asked Mr. Adkins to contact Mr. O'Brien and provide the Board with any information or disputes that can be resolved before the next Board meeting. Mr. Sipek added that the Personnel Cabinet has offered to send someone over to discuss COBRA if there is a dispute. Chairman Sapp asked Mr. Adkins to be diligent in getting this done before the next Board meeting.

7. **CLOSED SESSION**

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Hutcheson seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 4-0. (11:20 a.m.)

Mr. Hutcheson moved to return to open session. Mr. Gillis seconded and the motion carried 4-0. (11:50 a.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Shena Back v. Justice and Public Safety Cabinet (Corrections)

Mr. Hutcheson moved to note Appellee's exceptions and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 4-0.

B. Oda Barnes v. Cabinet for Health and Family Services

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 4-0.

C. William Mark Cassity v. Public Protection Cabinet (Alcohol Beverage Control)

Mr. Hutcheson moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 4-0.

D. Charles Clay Clement v. Cabinet for Health and Family Services

Mr. Gillis moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

E. Reda Darlene Heflin v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Hutcheson moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 4-0.

F. Scherry Griffin v. Cabinet for Health and Family Services
Deferred from February

Dr. Stevens moved to note Appellant's exceptions, Appellee's exceptions, Appellant's response, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 4-0.

G. Tina Back v. Cabinet for Health and Family Services

Mr. Gillis moved to note Appellant's exceptions, Appellee's response, Appellant's withdrawal of exceptions, Appellee's request to vacate oral argument and to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 4-0.

H. Adam Duncan v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

I. James Schultz v. Tourism, Arts and Heritage Cabinet (KSFB)

Mr. Hutcheson moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

J. Shannon Banta v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

K. Tammy Gallagher v. Transportation Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 4-0.

L. Paul J. Scott v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 4-0.

M. Claude Wayman v. Finance and Administration Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 4-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellant stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

N. Mary Meza v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Hutcheson moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Dr. Stevens seconded and the motion carried 4-0.

9. **WITHDRAWALS**

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Gillis seconded and the motion carried 4-0.

- A. Beanka Gay v. Transportation Cabinet
- B. Susan Owen v. Cabinet for Health and Family Services
- C. David Richardson v. Tourism, Arts and Heritage Cabinet (Parks)
- D. Charles Wolpert v. Personnel Cabinet
- E. John Gibbons v. Justice and Public Safety Cabinet (Corrections)
- F. Glenda Phillips v. Cabinet for Health and Family Services
- G. Julie Wagner v. Personnel Cabinet

10. **SETTLEMENTS**

Mr. Hutcheson moved to accept the following settlements, as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Dr. Stevens seconded and the motion carried 4-0.

- A. Scotty Mosley v. Tourism, Arts and Heritage Cabinet (KSFB)
- B. Derek Holbrook v. Cabinet for Health and Family Services

11. **OTHER**

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Hutcheson moved to adjourn. Dr. Stevens seconded and the motion carried 4-0. (11:59 a.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice-Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member